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PAGE 01 STATE 243141

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI IMMEDIATE

AMEMBASSY LONDON IMMEDIATE

C O N F I D E N T I A L STATE 243141

NAIROBI FOR JOEL BILLER

E.O. 11652: GDS

TAGS: EAIR, UK

SUBJECT:CIVAIR - STATUS OF US-UK AVIATION DISPUTE

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REF: NAIROBI 10645

1. FOLLOWING IS STATUS OF US-UK CIVAIR DISPUTE AS OF CLOSE OF BUSINESS SEPTEMBER 30. OVER PAST THREE DAYS THERE HAVE BEEN INTENSIVE DISCUSSIONS BETWEEN BRITISH EMBASSY OFFICERS AND DEPT OFFICIALS WITH REGARD TO THE IMPACT OF PHASE 1 OF THE CAB'S PART 213 ORDER AND THE BRITISH NOTICE REGARDING RESTRICTIONS ON PANAM'S HONG KONG-SYDNEY SERVICE.

2. ON SEPTEMBER 27 BRITISH AIRWAYS FILED WITH CAB MOTION TO STAY THE CAB'S PART 213 ORDER PENDING JUDICIAL REVIEW. BA'S CONCERN WAS, INTER ALIA, THAT THE 30-DAY FILING REQUIREMENT ON PROPOSED CHANGES IN SCHEDULES WOULD PREVENT BRITISH
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PAGE 02 STATE 243141

AIRWAYS FROM INAUGURATING A THIRD CONCORDE SERVICE TO

DULLES ON OCT. 5. DEPT AND CAB WERE RELUCTANT TO EXEMPT BRITISH AIRWAYS FROM THIS REQUIREMENT WHILE BRITISH WERE STILL, DESPITE MEETING BETWEEN BILLER AND ROGERS IN LONDON ON SEPT. 25, THREATENING TO TAKE UNILATERAL ACTION TO PROHIBIT PANAM'S CHANGE OF GAUGE ON THE HONG KONG-SYDNEY SERVICE EFFECTIVE OCTOBER 1. WE HAVE NOW WORKED OUT FOLLOWING ACCOMMODATION ON THESE TWO SPECIFIC QUESTIONS:

A. CAB ON SEPTEMBER 30 ISSUED ORDER DENYING REQUEST OF BRITISH AIRWAYS FOR STAY EXCEPT INsofar AS SCHEDULES FOR CONCORDE SERVICES ARE CONCERNED ON WHICH THE FILING DATE WOULD BE DEFERRED UNTIL OCTOBER 6. THIS HAS EFFECT OF PERMITTING THE THIRD CONCORDE SERVICE TO BE FILED AS AN EXISTING SCHEDULE.

B. BRITISH GOVERNMENT WILL NOT ENCOURAGE BRITISH AIRWAYS TO TAKE PART 213 ISSUE TO COURT AND, WHILE NOT GUARANTEEING WHAT COURSE BRITISH AIRWAYS MAY TAKE, DOES NOT EXPECT BRITISH AIRWAYS TO DO SO.

C. BRITISH WILL NOT PROHIBIT CHANGE OF GAUGE AT SYDNEY BEFORE NOVEMBER 1 (AND NOT THEREAFTER IF AGREEMENT ON OTHER ISSUES IS REACHED) AND WILL ALLOW PANAM TO CONTINUE CARRIAGE OF FIFTH FREEDOM BETWEEN HONG KONG AND SYDNEY AT A LEVEL TO BE AGREED BETWEEN THE TWO GOVERNMENTS "AS RAPIDLY AS POSSIBLE." NO DATE HAS BEEN FIXED FOR AGREEMENT ON LEVEL OF FIFTH FREEDOM CARRIAGE BUT ASSUMPTION IS THAT US WILL PROCEED IN GOOD FAITH TO NEGOTIATE THAT LEVEL AND NOT, FOR EXAMPLE, ATTEMPT TO HOLD UP AGREEMENT UNTIL NOVEMBER 1.

3. FOREGOING INFORMAL UNDERSTANDING DOES NOT ADDRESS THE MAIN ISSUE OF BRITISH UNILATERAL RESTRICTIONS AT MIAMI AND CHICAGO. ITS ONLY PURPOSE IS TO AVOID COMPLICATING THE TASK OF RESOLVING THE MIAMI/CHICAGO ISSUE BY THE INTRODUCTION OF OTHER UNILATERAL STEPS OR RETALIATORY ACTION. THIS IS CLEARLY UNDERSTOOD BY THE BRITISH SIDE. THE ONLY UNDERTAKING THAT US HAS ASSUMED WITH REGARD TO US RETALIATORY ACTION IS THAT NONE WOULD BE TAKEN WHICH WOULD HAVE EFFECT BEFORE NOVEMBER 1.

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PAGE 03 STATE 243141

4. CAB ON SEPTEMBER 30 SENT TO PRESIDENT PART 213 ORDER DISAPPROVING TWO OF BRITISH AIRWAYS' SEVEN WEEKLY SERVICES TO LOS ANGELES EFFECTIVE THIRTY DAYS AFTER SERVICE OF THE ORDER WHICH WOULD BE ABOUT NOVEMBER 10. SUBJECT FINAL APPROVAL, DEPARTMENT WILL ADVISE BRITISH EMBASSY ON OCTOBER 1 THAT, SINCE AN ACCEPTABLE SOLUTION HAS NOT YET BEEN FOUND, SUCH AN ORDER HAS GONE FORWARD AND DATE FOR

FINAL DECISION BY US IS END OF NEXT WEEK. IF BRITISH WILL WITHDRAW THEIR UNILATERAL ACTION OR ACCEPT COMPROMISE CAPACITY LEVELS OFFERED BY NATIONAL AND TWA BEFORE THE END OF NEXT WEEK, COUPLED WITH ASSURANCES, PART 213 ORDER WILL BE DISAPPROVED. HOWEVER, WE WOULD ADVISE BRITISH THAT, IF AN ACCEPTABLE SOLUTION IS NOT FOUND, PART 213 ORDER WILL BE ISSUED AND US WILL NOT PROCEED WITH THE RENEGOTIATION SCHEDULED TO RESUME ON OCTOBER 18.

5. WE EXPECT FOREGOING STRATEGY WILL RESULT IN SITUATION IN WHICH, EVEN IF THERE ARE MUTUAL THREATS OF FURTHER RETALIATION, A SOLUTION WILL BE FOUND AND NO UNILATERAL ACTIONS WILL HAVE TO BE IMPLEMENTED BY EITHER COUNTRY.

6. DEPT. ASSUMES THAT BILLER DOES NOT PLAN TO DISCUSS AVIATION ISSUE WITH BRITISH IN LONDON ON HIS RETURN TO WASHINGTON THIS WEEKEND. GIVEN DIFFICULTY OF REPORTING FULL DETAILS OF THE NUMEROUS CONVERSATIONS THAT HAVE TAKEN PLACE THIS WEEK WITH BRITISH, DEPARTMENT CONFIRMS IT WOULD NOT BE ADVISABLE FOR BILLER TO DISCUSS AVIATION QUESTIONS WHILE IN LONDON.

7. DICK BANK WILL CARRY WITH HIM FURTHER INFO THIS SUBJECT FOR DELIVERY TO BILLER. KISSINGER

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